

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of the Petition to Detach Certain
Land from the City of Wyoming, Minnesota and
the Concurrent Annexation to the City of
Chisago City, Minnesota, D-484/A-7775

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

This matter came before Chief Administrative Law Judge Raymond R. Krause (ALJ) pursuant to a referral from the Municipal Boundary Adjustment Unit (MBAU) dated January 17, 2012 and signed by Timothy J. O'Malley, Assistant Chief Administrative Law Judge, Municipal Boundary Adjustment Unit.

Mark J. Vierling and Andrew J. Pratt, Eckberg Lammers Attorneys at Law, appeared on behalf of the City of Wyoming (Wyoming). George C. Hoff and Shelley M. Ryan, Hoff, Barry & Kozar, P.A., appeared on behalf of the Petitioner and the City of Chisago City (Chisago).

A hearing was held on April 3, 2012, at the Wyoming City Hall. The parties stipulated to all of the factual exhibits. The record closed upon the filing of post-hearing briefs on April 17, 2012.

STATEMENT OF THE ISSUES

When the factors in Minn. Stat. § 414.02, subd. 3 are considered, is the detachment of the subject property from the City of Wyoming and the concurrent annexation of that property to the City of Chisago City in the best interests of both municipalities and the property owner?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The subject property is a 7.5 acre parcel of land wholly contained within the boundary of Wyoming. The property description is:¹

That part of the Southeast Quarter of the Southeast of Section 15 and that part of the Northeast Quarter of the Northeast Quarter of Section 22; all in

¹ Ex. 50 (Petition) p. 4.

Township 33 North, Range 21 West, Chisago County, Minnesota, described as follows:

Beginning at the southeast corner of said Southeast Quarter of the Southeast Quarter; thence North 00 degrees 18 minutes 10 seconds East, along the east line of said Southeast Quarter of the Southeast Quarter, a distance of 711.00 feet; thence North 88 degrees 20 minutes 00 seconds West, a distance of 310.00 feet; thence South 00 degrees 18 minutes 10 seconds West, parallel with said east line, a distance of 895.22 feet; thence South 31 degrees 53 minutes 42 seconds East, a distance of 284.65 feet to the centerline of Wyoming Trail; thence North 64 degrees 09 minutes 22 seconds East, along said centerline, a distance of 177.00 feet to the intersection with the east line of said Northeast Quarter of the Northeast Quarter of Section 22; thence North 00 degrees 11 minutes 35 seconds East, along said east line of the Northeast Quarter of the Northeast Quarter, a distance of 339.72 feet to the point of beginning.

Subject to and together with any valid easements, restrictions, and reservations.

Subject to Wyoming Trail.

2. The subject property is accessed from Wyoming Trail.²

3. The subject property is part of a larger parcel owned by MMP Companies (the Petersons). MMP Companies operates a landscaping business on the property. The portion of the MMP Company parcel that is not contained within the boundary of Wyoming is 2.5 acres and is contained within the boundary of Chisago. The total of the two parcels is 10 acres (the Combined Parcel).³

4. The Peterson family has owned the combined parcel approximately 100 years. The Peterson family has always considered themselves and their businesses as being part of Chisago. Their current businesses use Chisago as their address and they have had a positive working relationship with Chisago for many years.⁴ The business employs about 33 year-round employees and a total of about 60 during the summer.⁵

5. After a March 2011 fire burned the previously existing structures on the Combined Parcel, the Petersons relocated to temporary space in Columbus, Minnesota, while making an analysis of their options for the business.⁶ As part of their analysis, the Petersons approached Wyoming, Chisago and Chisago County about possible economic and other incentives to retain their business in its former location.⁷ The two

² Ex. 59, Testimony of John Peterson.

³ Test. of J. Peterson.

⁴ Test. of J. Peterson and Ex. 63.

⁵ Ex. 64.

⁶ Test. of J. Peterson.

⁷ Exs. 73-75, 81-87 and 108-115.

main concerns of the Petersons were increased taxes and duplication of effort and costs related to building permits, use permits and inspections since the site was governed by two separate municipalities.⁸

6. Chisago and Chisago County eventually resolved to provide tax relief to the Petersons as an incentive for them to return to and rebuild at their former location.⁹ Although tax incentives were considered by Wyoming, ultimately, no incentives were passed by the city council.¹⁰

7. Chisago and Wyoming did agree to resolve one of the Petersons' concerns. Both cities passed a joint powers agreement pertaining to building permits, land use, code enforcement, permit fees and inspections.¹¹ The joint powers agreement applies only to the Combined Parcel and is granted in perpetuity.¹² Essentially, the joint powers agreement delegates any of Wyoming's authority for permitting (including conditional use permits and building permits), code enforcement, inspection and fees to Chisago.¹³

8. When it became apparent that Wyoming was not going to approve tax incentives of the size or type requested by the Petersons, they began to initiate discussions with Wyoming and Chisago about a boundary adjustment that would put all of the Combined Parcel in one city. The city to which they wished to be annexed was Chisago.¹⁴

9. On September 13, 2011, the Chisago City Council approved a resolution to accept the subject property through annexation.¹⁵

10. On September 20, 2011, the Wyoming City Council disapproved of the proposed detachment of the subject property.¹⁶

11. On September 21, 2011, the Petersons filed a petition with the Minnesota Boundary Adjustment Unit.¹⁷ On January 5, 2012, the parties decided that mediation of the dispute was not likely to be fruitful and requested a hearing.¹⁸

12. On January 17, 2012, this matter was assigned to the undersigned ALJ to set for hearing.

⁸ Test. of John Pechman and J. Peterson.

⁹ Test. of J. Pechman and C. Eng, Exs. 82 and 70.

¹⁰ Test. of Craig Mattson, Ex 113.

¹¹ Test. of C. Mattson, J. Pechman and J. Peterson.

¹² Ex. 114.

¹³ *Id.*

¹⁴ Ex. 83 and 67 and Test. of J. Peterson, J. Pechman, C. Mattson and C. Eng.

¹⁵ Ex. 67.

¹⁶ Exs. 83-87.

¹⁷ Ex. 50.

¹⁸ Letter from Administrative Law Judge Beverly Heydinger, 01/05/2012.

13. The Petersons decided to rebuild on the Combined Parcel and a new facility was constructed on the site. The new facility was constructed on a spot that would facilitate entry and exit of heavy machinery from Wyoming Trail and present an attractive face to passing traffic. In doing so, however, the new facility had to be constructed at a location on the Combined Parcel such that the building is bisected by the boundary between Wyoming and Chisago.¹⁹

14. The Petersons were not prevented from obtaining permits to construct the new facility because of the divided jurisdiction.²⁰

15. The Combined Parcel consists of a landscaping and a trucking business. No residences are contained on the Combined Parcel.²¹ The populations of Wyoming and Chisago are 7791 and 4967 respectively.²² Both Chisago and Wyoming have experienced relatively strong growth of population over the past 15 years.²³ Present population and projected growth do not have a significant effect on the possible detachment and annexation.

16. There are no recognizable topographical or geographical differences that play a role in this decision. The subject property is 7.5 acres compared to 14,000 acres comprising Wyoming and 12,160 acres comprising Chisago.²⁴

17. The subject property is zoned as Rural Residential II and Agricultural by Wyoming and the parcel in Chisago is zoned Rural Residential I.²⁵ A Conditional Use Permit was adopted by Chisago on June 9, 2011, to allow the Petersons to continue their commercial use of the property on the Chisago side of the boundary.²⁶ No such Conditional Use Permit was issued by Wyoming; however, the joint powers agreement covers this issue for the subject property. The Wyoming Comprehensive Plan anticipates Lower-Density Suburban Neighborhoods and Medium-and Higher Density Suburban Neighborhoods.²⁷ The Chisago Comprehensive Plan anticipates Rural Residential development for the area in which the Petersons' parcel is located. Since the current use will require a Conditional Use Permit in either jurisdiction, this factor does not weigh heavily in the determination.

18. The Combined Parcel is accessed in two places by Chisago County Road No. 22, which is also Wyoming Trail.²⁸ There are no issues raised by transportation or highway development.

¹⁹ Test. of J. Peterson, Exs. 59 and 60.

²⁰ Test. of J. Peterson.

²¹ Exs. 51 and 116.

²² *Id.*

²³ *Id.*

²⁴ Exs. 51, 116 and 60-62.

²⁵ Exs. 51, 116, 56 and 57.

²⁶ Exs. 51 and 69.

²⁷ Exs. 102 and 54.

²⁸ Exs. 58, 59 and 62.

19. There are no significant inconsistencies between the land use controls presently being utilized and comprehensive plans for the two municipalities. The terms of the joint powers agreement between Chisago and Wyoming provide that the “ordinances, rules, regulations and policies determining land-use and related applications” of Chisago apply to the entire Combined Parcel.²⁹ Chisago also has the authority to apply its ordinances to determine building permits, code enforcement, building application fees, inspections, and related building code functions.³⁰ The two cities have, therefore, resolved any duplication or discrepancies between the two municipalities with regard to permitting, code enforcement, inspections, land-use, and fees in favor of Chisago’s ordinances and policies. This factor, therefore, does not play a significant role in the decision.

20. Neither city does now or plans in the future to provide sewer or water to the subject property. Chisago County will continue to provide street maintenance and service regardless of which city the subject parcel is part of. The existing mutual aid agreements between Wyoming, Chisago and other jurisdictions will continue to provide the same level of police and fire service regardless of which city contains the subject property.³¹

21. There are no known environmental concerns affecting the subject parcel or its immediate vicinity.³²

22. The proposed detachment and concurrent annexation will not have a significant impact on adjacent units of local government, bonded indebtedness, local tax rates of the county, school district or other governmental units. If the detachment and annexation were to occur, the applicable local tax rates in Chisago would be reduced by a minimal amount.³³ The tax rate in Wyoming would have to rise correspondingly. The loss to Wyoming would be approximately \$6,354 per year, or 2/10th of a percent of its current \$3,250,000 levy.³⁴ Because of the tax incentives offered by Chisago, the gain for that municipality would be minimal in the short term.

23. The proposed detachment and concurrent annexation would have no impact on school districts or adjacent communities.³⁵

24. Both cities have the capacity to economically provide services to the subject property. The joint powers agreement and mutual aid pacts already determine what jurisdictions are responsible for what services.³⁶

25. Because the joint powers agreement and the mutual aid pacts will cover the provision of services to the subject property, neither the proposed action nor another

²⁹ Ex. 114.

³⁰ *Id.*

³¹ Test. of C. Mattson, J. Pechman, Chief Paul Hoppe, and Chief Dennis Berry.

³² Exs. 51 and 116.

³³ Ex. 119.

³⁴ Exs. 51, 78 and 119.

³⁵ Exs. 51 and 116.

³⁶ *Id.*

type of boundary adjustment will significantly alter the provision of services to the subject property.³⁷

26. Neither Chisago nor Wyoming has very symmetrical borders.³⁸ Detachment and annexation of this subject property would not make the borders appreciably less symmetrical than they already are.

27. Because of the joint powers agreement, there would be no impact on the state building code.

28. The Petersons, as owners of the subject property, find the proposed detachment and concurrent annexation to be in their best interests.³⁹

29. The City of Chisago finds the proposed detachment and concurrent annexation to be in its best interests.⁴⁰

30. The City of Wyoming does not find the proposed detachment and concurrent annexation to be in the best interests of the city.⁴¹

31. The parties agreed to divide the Office of Administrative Hearings cost of the hearing equally among the two municipalities and the property owner.⁴²

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. This matter is properly before the Municipal Boundary Adjustment Unit and the ALJ pursuant to Minn. Stat. § 414.061, subd. 5 and Ch. 14.

2. The Petition for Detachment and Concurrent Annexation was properly filed and notice given pursuant to Minn. Stat. § 414.09, subd. 1(c). The hearing date was published pursuant to Minn. Stat. § 414.09, subd. 1(d).

3. A petitioner bears the burden of proof to demonstrate by a preponderance of the evidence that the petition meets the statutory requirements.⁴³

4. The Petitioner did not prove by a preponderance of the evidence that the proposed detachment and concurrent annexation meets the requirements of statute for approval.

³⁷ *Id.*

³⁸ Exs. 53, 54, and 55.

³⁹ Test. of J. Peterson.

⁴⁰ Test. of J. Pechman.

⁴¹ Test. of C. Mattson.

⁴² Representation by counsel, post hearing.

⁴³ Minn. R. 1400.7300, subp. 5.

5. Based on an analysis of the factors contained in Minn. Stat. § 414.02, subd. 3 (a) (1)-(13), detachment of the subject property from the City of Wyoming and the concurrent annexation by the City of Chisago City is in the best interests of the property owner and the City of Chisago City.

6. Based on that same analysis, the detachment of the subject property from the City of Wyoming and the concurrent annexation by the City of Chisago City is not in the best interests of the City of Wyoming.

7. The Petition does not meet the requirements of Minn. Stat. § 414.061, subd. 5, because it is not in the best interests of both municipalities and the property owner and therefore must be denied.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

Based upon these Conclusions, the Administrative Law Judge hereby ORDERS:

1. The Petition for Detachment and Concurrent Annexation be and hereby is DENIED.

2. The Office of Administrative Hearings costs are, by agreement of the parties, to be divided as follows; one third to the City of Wyoming, one third to the City of Chisago City and one third to the Petitioners.

Dated: May 2, 2012

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

Reported: Digitally recorded

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.061, 414.09, and 414.12. Any person aggrieved by this Order may appeal to Chisago County District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.⁴⁴

⁴⁴ Minn. Stat. § 414.07, subd. 2.

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions and Order within 7 days from the date of the mailing of the Order.⁴⁵ A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions and Order.

MEMORANDUM

In this case the Petersons own a parcel of property that is bisected by the boundary between the City of Wyoming and the City of Chisago City. They have petitioned to have the portion of the property that is located in the City of Wyoming detached from Wyoming and annexed to Chisago City. Their main purposes for doing this are to simplify their interactions with local government and to minimize the amount of taxes that they must pay on their commercial property.

In order to approve a petition for detachment and concurrent annexation, a petition must be found to be in the best interests of the municipalities and of the property owner. To determine whether the petition is in the best interests of the parties, the ALJ is directed by statute to analyze 13 factors. In this case many of the factors do not argue for or against detachment and concurrent annexation. For the sake of clarity and brevity those factors will not be discussed further.

One factor that does require analysis is the provision of governmental services to the subject property. The two municipalities have cooperated to create a joint powers agreement that minimizes duplication or discrepant practices and policies with regard to building permits, inspections, fees, and land-use planning. Because this joint powers agreement is already in place, the Petersons' legitimate concerns in this area have largely been addressed by the agreement. This factor, therefore, argues neither for nor against detachment and concurrent annexation.

Another factor that does apply is the fiscal impact of the proposed detachment and annexation. If detachment and annexation were to be approved, a portion of the City of Wyoming's land inventory and tax base would be transferred to the City of Chisago City. While the amount of tax revenue involved in the 7.5 acres is admittedly small, there is no offsetting gain or benefit to the City of Wyoming for having lost this tax base. From a fiscal perspective, the Petersons certainly would benefit. The City of Chicago City, however, would not appreciably benefit from a fiscal perspective because of the tax abatement it has promised to the Petersons.

Much testimony and many exhibits were proffered to discuss the various proposals for tax relief considered, approved or denied with respect to the subject property. Tax incentives for attracting or retaining businesses can be a relevant issue when considering the fiscal impact factor. In this case, however, the business has decided to stay where it has been. Any tax incentive provided to the Petersons at this point has little to do with whether the business remains where it is. Whatever benefits

⁴⁵ Minn. R. 6000.3100.

were or were not promised to the Petersons, they do not alter the calculus of whether this petition is in the best interests of either municipality. On these facts, tax incentives do not have a direct bearing on the outcome.

The controlling statute, Minn. Stat. § 414.061, subd. 5, requires that a detachment and concurrent annexation proposal, originating at the request of a property owner, must be in the best interests of the municipalities and the property owner. There is no question that the Petitioner in this case believes it is in his best interest to have the property annexed by Chisago City. The action of the Chisago City Council, adopting a resolution in support of annexation, demonstrates that Chisago has decided that it is in their best interest as well.

No evidence has been submitted to demonstrate that the proposed detachment and concurrent annexation is in the best interests of Wyoming. There was testimony that detachment would only cost Wyoming a "de-minimus" amount of tax dollars. There was also testimony that detachment should be considered "a wash" for Wyoming. While this may be true, the analysis required by statute does not involve a "de minimis" standard or a "breakeven" standard. The detachment must be in the "best interests" of both municipalities.

The fact that the City of Wyoming would lose a portion of its commercial tax base when there is no compelling reason for it to do so, no corresponding gain to Wyoming, or any advantage to the citizens of Wyoming or adjacent communities, demonstrates that this is not in the best interests of Wyoming. The Petition must therefore be denied.

R. R. K.